Chapter 1 History and Background

Origin

The 2001 Montana Legislature passed House Bill 397, "An Act Establishing the Clark Fork River Basin Task Force...." The bill, signed into law by Governor Martz, requires the Governor to "[D]esignate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare a water management plan for the Clark Fork River basin pursuant to 85-1-203" of the Montana Code Annotated (MCA). See Appendix 1 for a copy of HB 397.

In response to this legislation, on July 2, 2001, Governor Martz asked the Montana Consensus Council (MCC) to "take the lead in organizing, convening, and facilitating a task force to develop a water management plan for the Clark Fork River basin in Montana." In passing HB 397, the Legislature provided \$120,000 to support its implementation beginning in Fiscal Year 2003, which began on July 1, 2002.

HB 397 states that all watersheds and viewpoints within the basin should be adequately represented on the Task Force.

Prior to convening the Task Force, MCC prepared a situation assessment to identify the people and groups concerned about water management in the Clark Fork River basin, understand and document their interests and concerns, and examine how water management issues are now being addressed and how they are likely to be addressed in the future.

Purpose

The purpose of the Task Force, as defined by HB 397, is to prepare a water management plan for the Clark Fork River basin that (1) *identifies options to protect the security of water rights; (2) provides for the orderly development of water; and (3) provides for the conservation of water in the future.* The water management plan will be submitted to the Legislature and the Governor by September 2004. In the process of developing the water management plan, the Task Force is required to examine existing laws, rules, plans, and other provisions affecting water management in the Clark Fork River basin. The Task Force is also required to provide opportunities for public participation in the development of the water management plan.

Methodology

Convening the Task Force

During the situation assessment, MCC developed a list of people and groups concerned about water management in the Clark Fork River basin. Based on that list, and the directive in HB 397 that all watersheds and perspectives in the basin must be represented, MCC invited people and groups to participate on the Task Force. Those interested selected their own representatives to participate on the Task Force. A list of Task Force participants who developed the basin water management plan is shown in Table 1.1. A representative of the City of Missoula participated during 2003 but was forced to withdraw because of time constraints. Representative Verdell Jackson, who sponsored HB 397, served on the Task Force in an *ex officio* capacity.

Developing the Management Plan

The Task Force met for the first time on July 23, 2002, and met almost monthly another 24 times through adoption of the plan on August 16, 2004. At its second meeting on August 26, 2002, the Task Force adopted ground rules and a work plan to guide its activities in developing the management plan. The ground rules, which are included in Appendix 2, set forth the Task Force participants, their roles and responsibilities, the decision-making process, and procedures for relating to the media and general communications. The ground rules also specified the roles and responsibilities of the two state agencies assisting the Task Force, MCC and the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC). MCC was responsible for process support, including meeting facilitation and logistics, meeting summaries, and drafting Task Force documents, including the water management plan. DNRC provided technical information and advice and acted as the project fiscal agent. Consultants were also retained to draft profiles of the basin watersheds (see Chapter 3) and report on the basin's economic and demographic trends (see Appendix 3).

Development of the management plan began with a series of expert briefings to provide a shared understanding of basin hydrology and water use, Montana water law and the water appropriation process, and existing constraints on basin water management. The Task Force also developed a shared vision of how basin waters should be used and managed (see Chapter 2). The Task Force then identified and discussed issues arising from the three statutory plan mandates and alternatives for addressing them: identify options to protect the security of water rights; provide for the orderly development of water; and provide for the conservation of water in the future (see chapters 6, 7, 8, and 9). Chapter 10 discusses a strategy for overseeing implementation of the plan and for revising it as warranted as basin conditions change. From the alternatives, the Task Force developed the recommendations and conclusions included in Chapter 11.

Public Participation

Because they did not see an issue of immediate and compelling public interest, Task Force participants opted not to conduct formal public meetings until after the draft plan (including alternative recommendations to which the public might respond) was written. Throughout plan development, however, individual Task Force members discussed various topics with their constituents. The Task Force also printed a newsletter, *Clark Fork River Basin Water Plan News*, which discussed the Task Force's legal mandate and the three mandatory plan topics, protection of the security of water rights; the orderly development of water; and the conservation of water in the future. After the draft of this plan was written and distributed in both summary and complete form via the internet and through paper copies, Task Force members held meetings to solicit oral and written comments during July 2004 in Deer Lodge, Upsata Lake near Ovando, Hamilton, Ronan, Thompson Falls, and Kalispell. The Task Force then revised the draft plan in light of the public comments.

Plan Adoption

After considering the oral and written public comments, the Task Force adopted the plan pursuant to its ground rules on August 16, 2004. The decision rule in the ground rules called for participants to seek to make decisions via consensus. They also provide for a fall-back decision rule should consensus prove elusive. The Confederated Salish and Kootenai Tribes declined to sign as accepting the Plan. The Tribes' reason for declining is plainly stated in their letter: "[Clark Fork River] Basin adjudication and subsequent effective water management planning are dependent upon quantification and settlement of Basin reserved water rights. As [...] pointed out above, the Tribes, the United States, and the State of Montana are in the process of negotiating a compact to effect the

quantification and settlement of Tribal reserved rights. Because of this ongoing process, the Tribes have determined that it would be premature for the Tribes to sign as accepting the Plan. The Tribes have also determined, for the same reasons, that it would be premature for the Tribes to participate in the implementation phase of the Task Force as contemplated in Chapter 10." A copy of the letter from the Tribes explaining their position on plan adoption is included as Appendix 5 below. Because of the Tribes' position, the plan was adopted by majority vote.

Montana Consensus Council

MCC is an agency of state government attached to the Department of Administration for administrative purposes. It was originally created by Governor Racicot by executive order in 1994 after a group of farmers, ranchers, environmentalists, legislators, and state and federal officials agreed on the need for an ongoing forum to help citizens and officials resolve natural resource disputes. In 2003, MCC was authorized and created statutorily by the Montana Legislature. The mission of MCC is to promote effective natural resource and other public policy through public processes that are inclusive, informed, and deliberative. MCC is impartial and non-partisan; it is not an advocate for any particular interest or outcome.

Table 1.1 Clark Fork River Basin Task Force

Name	Organization	Area/Interest Represented
Matt Clifford	Clark Fork Pend Oreille Coalition	Conservation/ Environment
Elna Darrow	Flathead Basin Commission	Flathead Lake
Jim Dinsmore	Granite Conservation District & Upper Clark Fork River Basin Steering Committee	Upper Clark Fork watershed
Holly Franz	PPL Montana	Hydropower Utilities
Steve Fry	Avista	Hydropower Utilities
Harvey Hackett	Bitter Root Water Forum	Bitterroot River watershed
Fred Lurie	Blackfoot Challenge	Blackfoot River watershed
Eugene Manley	Granite County	Basin Local Governments
Gail Patton	Sanders County Commissioner	Basin Local Governments
Bill Slack	Joint Board of Control	Flathead River watershed below Flathead Lake to the confluence with the Clark Fork River
Marc Spratt	Flathead Conservation District	Flathead Basin above Flathead Lake
Jay Stuckey	Green Mountain Conservation	Clark Fork River
	District	Watershed below Flathead River confluence
Phil Tourangeau	Confederated Salish and Kootenai Tribes	Indian Tribes
Rep. Verdell Jackson Ex Officio	Montana House District 79	Legislature